

UNITED STATES DISTRICT COURT

for the

District of Montana

United States of America

v.

Cynthia Rae Pruett

Date of Original Judgment: 09/22/2023

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Case No: CR 23-39-BLG-SPW

USM No: 16177-091

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.
(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

Defendant seeks a sentence reduction under the retroactive application to the criminal history rules in Part A of Amendment 821 to the United States Sentencing Guidelines. (See Doc. 157.) Part A limits the overall criminal history impact of "status points" for offenders who committed the instant offense while under a criminal justice sentence. See USSG Ret. App. A & B, Sub. 1 Amendment 821 "Reasons for Amendment" (Nov. 1, 2023). "A defendant is ineligible for a sentence reduction if the relevant amendment does not have the effect of lowering the defendant's applicable guideline range." *United States v. Mercado-Moreno*, 869 F.3d 942, 949 (9th Cir. 2017); USSG §1B1.10(a)(2)(B) (2023).

Here, Defendant's prior convictions resulted in a subtotal criminal history score of nine, and because Defendant committed the instant offense while under a criminal justice sentence, she received two "status points," resulting in a total criminal history score of 11. (PSR ¶¶ 47–49.) Although Defendant would only receive one status point under the current guidelines, a total criminal history score of 10 would still result in a criminal history category of V. See USSG Ch.5, Pt.A, Sentencing Table (showing that criminal history category V includes all defendants with 10, 11, or 12 total criminal history points). Therefore, Defendant is ineligible for a sentence reduction because Amendment 821 "does not have the effect of lowering the defendant's applicable guideline range." *Mercado-Moreno*, 869 F.3d at 949. Because Defendant is ineligible for a sentence reduction under the retroactive application of Amendment 821, her motion should be denied.

Except as otherwise provided, all provisions of the judgment dated 9/22/2023 shall remain in effect.

IT IS SO ORDERED.

Order Date:

3/13/2024

Susan P. Watters
Judge's signature

Effective Date:

(if different from order date)

Susan P. Watters, U.S. District Judge
Printed name and title